IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 565 OF 2005

Shri Vithal Ganesh Sabnis ... Appellant

V/s

Shri Namdeo Yashwant Patil & ors. ... Respondents

Ms. Shakuntala Mudbidri for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 26TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Islampur dated 10.6.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Islampur, dated 23.1.1996 decreeing the plaintiff's suit for perpetual injunction to the effect that defendant No.1 was perpetually restrained from making any construction over the suit property and also from obstructing the enjoyment of the plaintiff over the suit property "B".

2. I have heard the learned counsel for the appellant.

Perused the record.

3. The plaintiff filed the suit for perpetual injunction as well as alternative mandatory injunction submitting that C.T.S. No. 3167 admeasuring 390.8 sq.mtrs. together with residential premises thereon was the suit property "A". Open space used as the way towards eastern side door of said suit property "A" is described as suit property "B". One Govind Dhondo Sabnis was the owner of the suit property "A". He sold the property to the plaintiff and defendant No.3. C.T.S. No. 3168 is owned and possessed by defendant Nos. 1 and 2. Single residential structure comprising of C.T.S. No.3167 and 3168 is known as Sabnis Wada. Plaintiff acquired right to use the suit property "B" i.e. the disputed way while purchasing C.T.S. No. 3167 from Govind Sabnis. Suit property "B" is the only main entrance and way of old Sabnis Wada. Rain water also flows through the suit property "B". It is the only way of original Sabnis Wada. Defendant No.1 tried to make construction on the suit property "B" and tried to close the way though he had no right to do so. Hence the suit came to be filed.

4. The defendant No.1 contested the suit on various

grounds inter-alia submitting that there was no override involved in the property belonging to the plaintiff and consequently the suit was sought to be dismissed.

5. The learned Trial Judge after hearing both sides adjudicated the dispute on merits and came to the conclusion that it was the plaintiff who was in peaceful possession over the suit way and it was further held that he had right of enjoyment over the suit way and it was obstructed by the defendants and, therefore, the suit for perpetual injunction came to be decreed.

6. The appeal was carried to the Court of Addl. District Judge, Islampur, who, after hearing both parties, came to the conclusion that the findings recorded by the Trial Court were legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

7. At the outset, it may be noted that there is no substantial question of law involved in this appeal. It was submitted on behalf of the appellant that there was no pleading in the plaint in respect of right of way to the plaintiff and, therefore, the entire suit based upon such so-called right was bound to be dismissed.

However, I would prefer to disagree with this proposition on the basis of entire record including the judgments of both the Courts below. However, the entire dispute revolves around the right of way pleaded and adjudicated in the proceeding. The observation made by the lower appellate Court to the effect that, it has to be noted that in the sale deed in question it was made clear that passage was leading towards the main road, the passage is running east-west and it is joining main road running south-north and the purchaser has been given right to use the said passage. This observation based on the evidence on record is sufficient to show that both the Courts below have rightly concluded that the plaintiff has right of way over the suit way and, as such, the appeal has no merits especially when no substantial question of law is involved in the appeal.

8. In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1001 of 2005 also stands dismissed with no order as to costs.

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